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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/559,519	04/27/2000	Yury Bakshi	1999-0482	2307

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EXAMINER	
NGUYEN, STEVEN H D	
ART UNIT	**PAPER NUMBER**
2665	

DATE MAILED: 07/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/559,519	BAKSHI, YURY	
	Examiner	Art Unit	
	Steven HD Nguyen	2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 May 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-10 and 12-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-10 and 12-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-2, 4-10 and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colby (USP 6006264) in view of Wolf (USP 6374297).

Colby discloses (Figs 1-23 and col. 1, lines 9 to col. 19, lines 62) a method of controlling data transmissions in a network between at least one terminal and at least one server comprising determining a current status of the at least one server; determining a transmission rate of the at least one terminal based on the current status of the at least one server; and adjusting the transmissions from the at least one terminal to the at least one server based on the transmission rate (See col. 6, lines 29 to col. 9, lines 67 and col. 14, lines 5 to col. 17, lines 36, Fig 2, a content flow switch includes a controller for determining the load on the server for storing in the a memory having the data bases such content server database includes load on the servers; and flow admission control to prevent the server from overload and using Web flow redirector for redirect the flows away from overloaded server to least load server by performing a load balancing; See col. 6, lines 35-63; the flow switch determines the transmission rate of the client based on the load of the server in order to prevent overload on the server; See col.9, lines 1-67 and col. 14, lines 5-19); receiving an overload notification from one of at least one server and updating a local status indicator for the one of at least one server (See col. 7, lines 16-31);

determining an overload status of each server based on whether any server is overloaded (See col. 7, lines 11-12); adjusting a local load coefficient based on the overload status (col. 7, lines 58 to col. 8, lines 5, adjusting weight for prevent congestion); includes decreasing the local load coefficient if the overload status indicates that all of the servers are overloaded and increasing the local load coefficient if the overload status indicates that none of the servers are overloaded (Fig 2 includes Flow admission control for blocking or rejecting the incoming request "increasing coefficient load" and admitting the incoming request by decreasing the load coefficient; See col. 9, 58-67, increasing the probability if the future request is satisfied decreasing the probability if the future request is not satisfied). However, Colby does not disclose a method modifying at least one local load weight if portion of the server is overload to move a load from at least one overloaded server to at least one non-overloaded server. In the same field of endeavor, Wolf discloses a method and system for load balancing of the servers by modifying the load weight of portion of overloaded server to shift a load from overloaded server to a least load server (See col. 3, lines 28-31).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a method and apparatus for shifting a load from a overloaded server to least load server as disclosed by Wolf into Colby's system. The motivation would have been to share the load on the server more effectively.

Response to Arguments

3. Applicant's arguments filed 5/11/04 have been fully considered but they are not persuasive.

In response to pages 2-4, the applicant states that Colby fails to disclose a method and apparatus for adjusting the transmissions from the terminal to the server based on the transmission rate by modifying a load weight to move a load from overloaded server to a non-overloaded server. In reply, Colby discloses a flow switch for determining a transmission rate between the terminal and server. The flow will be admitted into the link between the switch and server if the transmission rate of the flow will not violate QOS of the link between the switch and server. If the flow will violate the QOS, the switch will redirect the flow to another server which is less load than the previous server in order to establish a flow between at least one server and client (reads on adjusting the transmissions from terminal to the server based on the transmission rate of the terminal, See col. 14, lines 10-19 and col. 6, lines 64 to col. 7, lines 18) and Wolf discloses a method and system for adjusting a load on the overload server by moving a portion of the load of the overloaded server to a non overload server based on transmission rate of the customers (reads on modifying the weight by shifting load from overloaded server to non-overload server; (See col. 3, lines 28-31).

4. In response to pages 4-5, the applicant states Colby fails to disclose the claims 5-7 and 13-15 which are described in page 6, lines 13-19 of the specification. In reply, In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., load coefficient ... the data transmission, specification, page 6, lines 13-19) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (703) 308-8848. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D Vu can be reached on (703) 308-6602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steven HD Nguyen
Primary Examiner
Art Unit 2665
7/1/04